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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1052 OF 2006
IN
CRIMINAL APPEAL NO. 970 OF 2006

Kishor Baban Gaikwad ... Applicant

V/s

The State of Maharashtra ... Respondent

Mr. Jayesh B. Kocheta for the applicant accused No.1.

Mr. P.A. Pol, A.P.P. for the respondent State.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 3RD MAY, 2007.

P.C.:

1. Heard the advocate for the accused and the learned A.P.P. The accused is a young boy of 18 years of age. He is convicted under Section 302 of the Indian Penal Code. The advocate for the accused contended that PW-2 is the only eye witness whose version is totally different. According to PW-2, the accused pelted stone only once, however, according to the medical evidence, the deceased must have been hit many times. Secondly, the conduct of PW-2 is also unnatural because after the incident he does not go to the police station

which is just 500 mters away but goes to the house and sleeps and thereafter gives the statement. Further, the accused had no intention to kill the deceased.

2. We had asked the learned A.P.P. to find out whether there is any criminal antecedent. An affidavit was filed in this regard of the P.S.I. of the Samarth Police Station, Pune (City), Pune. No antecedents are given. The only apprehension against the accused as explained by the prosecution is that, if the accused is released on bail, there will be communal riot. The nature of the offence does not create any such apprehension and even otherwise we can impose conditions. Hence the following order:-

O R D E R

(i) The application for bail allowed.

(ii) The substantive sentences of the accused suspended pending appeal.

(iii) He be released on bail on his furnishing P.R. bond of Rs.15,000/- with two solevent sureties in the like amount.

(iv) He will attend the concerned Police Station once in a fortnight for a period of one year initially and thereafter after every two months till the appeal is disposed of.

(v) He will not try to contact any prosecution witness.

3. Application disposed of.

(D.G. DESHPANDE, J.)

(SMT. NISHITA MHATRE, J.)